Supreme Court, U.S.
FILED
JUL 6 1992
OFFICE OF THE CLERK

No. 91-1769

In the Supreme Court of the United States

OCTOBER TERM, 1992

KATHLEEN SAUNDERS WILLIAMS, INDIVIDUALLY, AND KATHERINE SAUNDERS WILLIAMS, EXECUTRIX OF THE ESTATE OF ELIZABETH GEORGE SAUNDERS, DECEASED, PETITIONERS

v.

FEDERAL LAND BANK OF JACKSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

ANTHONY J. STEINMEYER
MATTHEW M. COLLETTE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether 12 U.S.C. 2278a-3(b), which provides that any action to which the Farm Credit System Assistance Board is a party is "deemed to arise under the laws of the United States" and grants federal jurisdiction over all such actions, is consistent with Article III of the Constitution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 39a-51a) is reported at 954 F.2d 774. The opinion of the district court (Pet. App. 52a-59a) is reported at 729 F. Supp. 1387.

JURISDICTION

The judgment of the court of appeals was entered on February 4, 1992. The petition for a writ of certiorari was filed on May 1, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Farm Credit System Assistance Board (Assistance Board) is "a Federally chartered instrumentality of the United States" chartered by the Farm Credit Administration. 12 U.S.C. 2278a(a).[1] The purposes of the Assistance Board are "to carry out a program to provide assistance to, and protect the stock of borrowers of, the institutions of the Farm Credit System, and to assist in restoring System institutions to economic viability and permitting such institutions to continue to provide credit to farmers, ranchers, and the cooperatives of such, at reasonable and competitive rates." 12 U.S.C. 2278a-1.[2] The Assistance Board is supervised by a Board of Directors consisting of the Secretary of the Treasury, the Secretary of Agriculture, and "an agricultural producer experienced in financial matters, and appointed by the President, by and with the advice and consent of the Senate." 12 U.S.C. 2278a-2(a). The Assistance Board finances its activities by authorizing the Farm Credit System Financial Assistance Corporation to issue bonds guaranteed by the United States Treasury.[3] 12 U.S.C. 2278a-7(a), 2278b-5(a), 2278b-6. The Assistance Board is exempt from federal, state, and local taxation, except for ad valorem

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[1] Congress by statute has created the Farm Credit Administration as "an independent agency in the executive branch of the Government." 12 U.S.C. 2241. It is administered by a Board of three members appointed by the President with the advice and consent of the Senate. 12 U.S.C. 2242(a).

[2] The Farm Credit System includes the Farm Credit Banks (see 12 U.S.C. 2011), as well as various other institutions chartered by the Farm Credit Administration. 12 U.S.C. 2002(a).

[3] The Farm Credit System Financial Assistance Corporation is also an instrumentality of the United States chartered by the Farm Credit Administration. 12 U.S.C. 2278b.

taxation on real estate it owns. 12 U.S.C. 2278a-11. The Assistance Board will cease to exist as of December 31, 1992. 12 U.S.C. 2278a-12.

2. In 1981, petitioner Kathleen Saunders Williams and Elizabeth George Saunders borrowed $1,309,000 from the Federal Land Bank of New Orleans, predecessor in interest to the Federal Land Bank of Jackson. The loan was secured by a deed of trust on approximately 1400 acres of land in Leflore County, Mississippi known as the Runnymede Plantation. By March 1987, the borrowers were in default, owing $1,236,016.50 in principal, interest, and accrued penalties. The borrowers then approached the Federal Land Bank Association of Jackson (which serviced the loan) with a proposal to sell the Runnymede Plantation and to use a portion of the proceeds to reduce the outstanding balance of the loan to $422,183.10; as security for the remaining loan the borrowers offered a different parcel of property, farming equipment, a cattle herd, and stock. The Association rejected the offer, on behalf of the Bank, acting, according to Williams, at the direction of the Farm Credit System Capital Corporation.[4] Subsequently, petitioners[5] approached the Association with a request that it consent to a sale of the farm, intending to use the proceeds to pay off the debt entirely. After the Association consented, petitioners

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[4] The Farm Credit System Capital Corporation was the predecessor to the Assistance Board. See 12 U.S.C. 2278a, 2278a-9(a). It was involved in the affairs of the Jackson bank because it had been giving financial assistance to that bank at the time of these events. See Pet. App. 41a n.1.

[5] Elizabeth George Saunders had died, and petitioner Katherine Saunders Williams became involved as executrix of Elizabeth George Saunders' estate. See Pet. App. 41a.

sold the collateral and used the proceeds to repay the loan. Pet. App. 40a-42a.

3. On December 22, 1987, petitioners brought this action in the Circuit Court of Leflore County, Mississippi, charging the Association, the Bank, and the Farm Credit System Capital Corporation with various torts and breaches of contract in connection with their response to the two proposed sales of the collateral; petitioners sought damages of more than $1,000,000, including $500,000 for emotional distress.

4. Pursuant to the Agricultural Credit Act of 1987, Pub. L. No. 100-233, § 201, 101 Stat. 1585, the Farm Credit System Capital Corporation was dissolved and replaced in the Mississippi action, as of January 21, 1988, by the Assistance Board. See 12 U.S.C. 2278a; Pet. App. 42a. The Assistance Board removed the case to federal court pursuant to 12 U.S.C. 2278a-3(b), which provides that "any civil action, suit, or proceeding to which the Assistance Board is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have exclusive jurisdiction over such."[6] Petitioner did not contest the removal. In due course, the district court granted the Assistance Board's motion to dismiss the complaint for failure to

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[6] That Section provides:

> Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Assistance Board is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have exclusive jurisdiction over such. The Assistance Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

state a claim upon which relief could be granted. Pet. App. 52a-59a.

5. The court of appeals affirmed. Pet. App. 39a-51a.[7] Examining its jurisdiction, the court noted that 12 U.S.C. 2278a-3(b) reflected a clear intention to grant federal jurisdiction, which would "prevai[l] if the Constitution permits." Pet. App. 43a. The court concluded that jurisdiction was based on the federal judicial power described in Article III, Section 2 of the Constitution, which extends "to all Cases * * * arising under * * * the Laws of the United States." The court explained that this Court had held in *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738, 822-828 (1824), that this portion of the judicial power extends to all cases involving entities created by the United States, "on the theory that the provision creating the entity is potentially at issue in every such case." Pet. App. 43a-44a. Because the Assistance Board was created by the United States, the Constitution permitted Congress to extend federal question jurisdiction to all cases involving the Assistance Board. Pet. App. 44a-45a.

ARGUMENT

Petitioners' sole claim (Pet. 17-27) is that 12 U.S.C. 2278a-3(b) violates Article III by vesting federal jurisdiction over all cases involving the Assistance Board. That claim is meritless. "As long ago as *Osborn*, this Court held that Article III's 'arising under' jurisdiction is broad enough to authorize Congress to confer federal court jurisdiction over actions involving federally chartered corporations." *American National Red Cross* v. *S.G.*, No. 91-594 (June 19, 1992),

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[7] Justice Thomas was a member of the panel when the case was argued but did not participate in the opinion. Pet. App. 40a n.**.

slip op. 17. Because the Assistance Board was created by the federal government, this rule squarely applies and validates the jurisdictional grant reflected in 12 U.S.C. 2278a-3(b).

Petitioners' contrary arguments are unfounded. First, petitioners err in suggesting (Pet. 18-21) that subsequent statutes and decisions have limited *Osborn*'s reach. Subsequent statutes, of course, cannot alter the breadth of the Constitution, and this Court's cases have not limited *Osborn*'s constitutional holding, but rather, as the *Red Cross* Court noted, have "consistently reaffirmed the breadth of that holding." Slip op. 17-18.[8]

Second, petitioners incorrectly suggest (Pet. 21-24) that Section 2278a-3(b) violates Article III because it is a "pure jurisdictional statute," conferring jurisdiction over cases that otherwise would not involve federal law. This argument simply ignores the Court's dispositive holding in *Osborn*—recently reaffirmed in *Red Cross*—that all cases to which federally chartered instrumentalities are a party involve an ingredient of federal law sufficient to satisfy Article III, Section 2.[9]

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[8] The cases on which petitioners rely, *Gully* v. *First National Bank*, 299 U.S. 109 (1936), and *Wheeldin* v. *Wheeler*, 373 U.S. 647 (1963), are cases interpreting the well-pleaded complaint rule, which is a gloss on the statutory grant of federal jurisdiction over cases "arising under" federal law. As the Court explained in *Red Cross*, that rule "has no applicability" to other jurisdictional grants, such as the constitutional grant at issue in this case. Slip op. 10-11.

[9] In any event, the argument also ignores the facts of this case, in which the Assistance Board had a substantial argument that the dispositive rule of law was based on federal common law. See Pet. App. 45a (declining to determine whether federal law applies, because petitioners' claims were meritless even under state law).

Finally, petitioners contend (Pet. 24-27) that the Assistance Board's charter is inadequate to bring this case within the constitutional grant of jurisdiction over cases arising under federal law. Their only support for this argument, however, is a number of lower court decisions construing *statutory* grants of federal jurisdiction and concluding that those grants did not authorize federal courts to hear certain cases involving federally chartered entities. Nothing in any of those cases supports their argument—in the face of *Osborn*—that the *constitutional* grant of jurisdiction does not allow Congress to extend federal jurisdiction to such cases.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

ANTHONY J. STEINMEYER
MATTHEW M. COLLETTE
Attorneys

JULY 1992